

REMARKS

This Reply is in response to the Final Office Action mailed on March 16, 2007 in which claims 22-31 remaining withdrawn from consideration; in which claims 41-58 were allowed and in which claims 1-4, 6, 33, 35 and 37-39 were rejected. With this response, claim 1, 3, 37 and 38 are amended and claim 59 is added. Claims 1-4, 6, 33, 35, 37-39 and 41-59 are presented for reconsideration and allowance. Because claim 1 is believed to be generic to the previous non-elected species, upon allowance of claim 1, Applicants respectfully request reinstatement of previously withdrawn claims 22-27 which depend from claim 1.

I. Examiner Interview Summary

On May 30, 2007, a telephonic interview was held between Examiner Koczo and Applicant's attorney, Todd A. Rathe. The finality of the office action, the rejection of claim 1 based upon Leilde EP 0786596 and the rejection of the claims under 35 USC 112 were discussed. Examiner Koczo tentatively indicated that above amendment to claim 1 appeared to overcome the rejection based upon Leilde EP 0786596. Examiner Koczo further tentatively indicated that the final office action may need to be withdrawn, but reserved any final conclusion prior to further review.

Although no specific agreement was reached, Applicants wish to thank Examiner Koczo for the opportunity to discuss the rejection.

II. Request for Withdrawal of Finality of Office Action

Applicants respectfully request that the finality of the office action be withdrawn since the Office Action Relies upon New Grounds of Rejection NOT Necessitated by Applicant's Amendments

MPEP 706.07(a) states:

a second or any subsequent action on the merits in any application ... will not be made final if it includes a rejection, on newly cited art ... of any claim not amended by applicants or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

Page 6 of the Office Action dated October 13, 2006 indicated that claim 32 would be allowable if rewritten to overcome the rejections under 35 USC 112 and to include all of the limitations of the base claim and any intervening claims. With the response filed on January 16, 2007, Applicants amended independent claim 1 to incorporate the limitations of claim 32 which was canceled. Those portions of claim 32 incorporated into claim 1 were further amended to overcome the rejection under 35 USC 112, second paragraph. The current Office Action dated March 16, 2007 rejects claim 1 under 35 USC 102(b) based upon Leilde EP 0786596. This, in effect, constitutes a new ground of rejection for former claim 32, now rewritten as part of base claim 1. Thus, the rejection of claim 1, corresponding to former claim 32, is based on a new ground of rejection not necessitated by Applicants' amendment. Accordingly, the finality of the present Office Action is improper and should be withdrawn. Applicants respectfully request entry of the above amendments upon withdrawal of the final office action and issuance of any new non-final office action should the case not be placed in condition for allowance with the above amendments.

### III. Claim Objections

Page 2 objected to claims 3, 6 and 37 noting several informalities. In response, claim 3 is amended to delete the redundant term "pivotable." Claim 37 is amended to replace the term "sad" with -- said --.

With respect to claim 6, the Office Action asserted that the subject matter of claim 6 is redundant because it is already recited in claim 1. Applicants respectfully note that this assertion is incorrect. Claim 1 is broader than claim 6. Claim 1 recites that the at least one bias mechanism resiliently biases one of the support and the first occlusion towards a non-pumping position. In contrast, claim 6 specifies that the first occlusion is resiliently biased towards a non-

pumping positioned by the at least one bias mechanism. Thus, claims 1 and 6 are not redundant. Applicants respectfully request of the objection to claim 6 be withdrawn.

IV. Rejection of Claims 1-4, 6, 33, 35, 37 and 39 under 35 USC 112, Second Paragraph

Page 2 of the Office Action rejected claims 1-4, 6, 33, 35, 37 and 39 under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.. In particular, the Office Action asserted that the scope of the claims cannot be clearly ascertained since the claims are not limited to the elected species.

Applicants respectfully request that the rejection of claims 1-4, 6, 33, 35, 37 and 39 be withdrawn. As noted by Applicants during the Examiner Interview held on May 30, 2007, the mere fact that a claim is sufficiently broad so as to encompass both elected and nonelected species would not appear to render such claim indefinite. Applicants respectfully note that MPEP 2173.05(h) clearly indicates that "alternative expressions are permitted if they present no uncertainty or ambiguity with respect to the question of scope or clarity of the claims." MPEP 2173.05(h) further indicates that alternative terminology such as "or" and "optionally" may be acceptable if there is no ambiguity as to which alternatives are covered.

In the present case, the scope of the rejected claims is clearly ascertainable. There is no ambiguity as to which alternatives are covered. The two alternatives covered by the rejected claim include (1) the support is resiliently biased or (2) the occlusion surface is resiliently biased. There is no ambiguity. One of ordinary skill in the art would clearly understand the alleged indefinite claim language to mean that either the support or the occlusion is resiliently biased. Accordingly, Applicants respectfully request that the rejection of claims 1-4, 6, 33, 35, 37 and 39 under 35 USC 112, second paragraph be withdrawn.

In addition, claim 38 is amended to correctly depend from claim 37. Thus, Applicants respectfully request that the rejection of claim 38 under 35 USC 112, second paragraph, be withdrawn.

V. Rejection of Claims 1, 2, 3 and 6 under 35 USC 102(b) Based upon Leilde

Page 5 of the Office Action rejected claims 1, 2, 3 and 6 under 35 USC 102(b) as being anticipated by Leilde EP 0786596. Claims 1, 2, 3 and 6, as amended, overcome the rejection based upon Leilde.

Claim 1 is amended to recite that the at least one bias mechanism coupled to said one of the support and the first occlusion resiliently biases said one of the support and the first occlusion towards a non-pumping position while the at least one bias mechanism is out of contact with the first occlusion surface.

As tentatively agreed upon during the Examiner Interview held on May 30, 2007, Leilde does not disclose such a bias mechanism. Tube 50 of Leilde cannot resiliently bias one of the support and the first occlusion towards a non-pumping position while out of contact with the occlusion surface. Accordingly, claim 1, as amended, overcomes the rejection based upon Leilde. Claims 2, 3 and 6 depend from claim 1 and overcome the rejection for the same reasons.

VI. Added Claim

With this response, claim 59 is added. Claim 59 is believed to be patentably distinct over the prior art of record.

Claim 59 depends from claim 1 and further recites that the pump includes at least one tube between the occluding surfaces and the first occlusion surface. The prior art of record fails to disclose the limitations of claim 59. Accordingly, claim 59 is presented for consideration and allowance.

VII. Conclusion

After amending the claims as set forth above, claims 1-4, 6, 33, 35, 37-39 and 41-59 are presented for reconsideration and allowance. Because claim 1 is believed to be generic to the previous non-elected species, upon allowance of claim 1, Applicants respectfully request reinstatement of previously withdrawn claims 22-27 which depend from claim 1.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 08-2025. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 08-2025. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 08-2025.

Respectfully submitted,

Date June 1, 2007

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